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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1222

NORMA RUUD, ROYCE RUUD, and WILLMAR NURSING HOME, INC.,

Petitioners,

vs.

STATE OF MINNESOTA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Norma Ruud, Royce Ruud, and Willmar Nursing Home, Inc., pray that a writ of certiorari issue to review the judgment of the Supreme Court of Minnesota entered in the above-entitled case on December 2, 1977.

I.

OPINIONS BELOW

The opinion of the Supreme Court of Minnesota is reported at — Minn. —, 259 N.W.2d 567 (1977), and is printed in Appendix A hereto, *infra*, page A-99. The Order

of the Supreme Court of Minnesota denying a rehearing is printed in Appendix A hereto, *infra*, page A-127. The Judgment of the Supreme Court of Minnesota is printed in Appendix A hereto, *infra*, page A-129. The Judgment of the District Court of Kandiyohi County, Minnesota, is printed in Appendix A hereto, *infra*, pages A-89-99.

II.

JURISDICTION

The Supreme Court of Minnesota filed its opinion on October 21, 1977. A timely Petition for Rehearing was denied on December 2, 1977. The Judgment of the Supreme Court of Minnesota was entered on December 2, 1977 (Appendix A, *infra*, page A-129). The jurisdiction of the United States Supreme Court is invoked under United States Code, Title 18, Sec. 1257, 62 Stat. 929.

III.

QUESTIONS PRESENTED

1. Were search warrants which authorized searches for records and documents of Willmar Nursing Home, Inc., without practical limitation, at the corporate offices of the corporation, at the home of Royce Ruud and Norma Ruud, and for records and documents of all other businesses owned and controlled by Norma Ruud and Royce Ruud, so broad and sweeping in their authority that they violated the Petitioners' rights under the Fourth and Fourteenth Amendments of the Constitution of the United States?

2. Did the conduct of the searches, by two peace officers who did not make the determination as to what

was to be seized, and by an assistant attorney general, a special assistant attorney general, the audit director and an auditor of the Minnesota Department of Public Welfare, who did determine what was to be seized and who admittedly seized documents having no relevance to the issues, and who searched the entire home of Petitioners, beyond the scope of the warrant, violate Norma and Royce Ruuds' rights under the Fourth and Fourteenth Amendments of the Constitution of the United States?

3. Was there probable cause for issuance of a search warrant against the corporate offices where the supporting affidavit relied, in part, on the statements of anonymous former employees, and in part, on unsworn testimony or testimony not of record?

4. Was there probable cause for issuance of a search warrant against Norma and Royce Ruuds' home where the supporting affidavit, identical to the affidavit supporting the warrant for a search of the corporate offices, was based, in part, on the statements of unnamed former employees, and, in part, on unsworn testimony or testimony not of record?

IV.

STATUTES INVOLVED

Amendment IV of the United States Constitution. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Section I of Amendment XIV of the United States Constitution. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 1257 of Title 28, U.S. Code, 62 Stat. 929. State Courts; Appeal; Certiorari. Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . .

(3) By writ of certiorari, . . . where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.

Sections 609.05, 609.465, and 609.52, Minnesota Statutes 1974, the criminal code provisions under which Petitioners were convicted are set out in Appendix A, *infra,* page A-129.

Relevant sections from Chapter 626, Minnesota Statutes 1974, relating to searches and seizures, are set out in Appendix A, *infra,* pages A-131-36.

Rule 11 of the Minnesota Rules of Criminal Procedure, relating to omnibus hearings, are set out in Appendix A, *infra,* page A-136.

V.

STATEMENT

Petitioner Willmar Nursing Home, Inc., owns a nursing home in Willmar, Minnesota. Except for one share owned by their children, Petitioners Norma and Royce Ruud own all of the stock in the corporation. Norma Ruud is the administrator of the nursing home and the secretary-treasurer of the corporation. Royce Ruud is the assistant administrator of the nursing home and the president of the corporation. Royce Ruud is also engaged in farming enterprises.

In 1972, the Minnesota Department of Public Welfare (hereinafter DPW) adopted a regulation, known as Rule 49, containing a complex formula for determining public reimbursement of nursing home care rendered to welfare recipients. The Rule requires nursing homes to submit to DPW annual cost statements, summarizing patient-related costs according to various categories set forth in the 24-page Rule and in the 22-page cost reporting form. On the basis of these reports, DPW determines a reimbursement rate for welfare recipients for the following year.

The annual cost statements are audited in the offices of DPW. Field audits, similar to IRS audits, are also undertaken, not universally, but on a random basis determined by DPW.

In 1974 Robert Rau, DPW's audit director, determined to have a field audit made of Petitioners' nursing home, and on December 10, 1974, sent a DPW auditor, Raymond Otto, to Willmar to make the audit. Otto worked on the field audit until January 9, 1975, and reported to Rau that he suspected that not all costs reported on the annual cost statement were patient-related. After Norma

Ruud responded to a special questionnaire submitted by DPW, her answers therein were compared with Otto's audit records. Rau then took up the matter with Thomas Fabel, assistant attorney general, and Barbara Gill, special assistant attorney general, both assigned to DPW. Together they determined to seek a search warrant and collaborated in its preparation.

On August 28, 1975, Rau, Otto, Fabel, and Gill appeared at the offices of the Kandiyohi County Attorney with prepared affidavits and search warrants which were pertinent only to a search of the nursing home offices and not the Ruuds' home. The local magistrate, Allan Buchanan, was summoned to the local prosecutor's office and the documents were presented to him. Audit Director Rau engaged in what he called a "dialogue" with the magistrate. He was not sworn until ten or fifteen minutes after the "dialogue" started. No record of the sworn or unsworn statements was made and no transcript thereof exists.

It appears from the official records that a decision was made at this time also to search the corporation's "office and record storage place" located in the Ruuds' home. Copies of the prepared affidavit and search warrant were altered to name the Ruud home. Now there were two sets of affidavits and search warrants, identical in all respects except for named location to be searched. During the proceedings, two officers of the Willmar Police Department, were also present. The warrants, addressed to one of them, directed him to seize various materials. During these proceedings, the names of Fabel, Gill, Rau and Otto and one additional police officer were, at the instruction of the prosecutor and magistrate, typed in the body of the warrants. (*See*, the affidavit and search warrant for the corporate offices, Appendix A, *infra*, pages A-1 and A-7, respectively, and the affidavit and search warrant for the offices and record storage places in the Ruuds' home, Appendix A, *infra*, pages A-11 and A-17 respectively.)

Having procured the warrants, the search party split up. One group, composed of a police officer, the assistant attorney general (Fabel), and the audit director (Rau) proceeded to the Ruud home, where Petitioner Royce Ruud was at the time. The other group, composed of the special assistant attorney general (Gill), the field auditor (Otto), and another police officer went to the nursing home. Both groups arrived at their respective destination at about six o'clock P.M. on August 28. The searches continued until two o'clock in the morning of the following day. The search of the Ruud home continued until about ten-thirty in the evening. During the search of the home Fabel searched every single room in the home, including the basement and the garage, even though the warrant specified that only the offices and record storage places were to be searched.

During the search the police officer to whom the warrants were specifically addressed, was in a passive role and made few, if any, decisions as to what was to be taken. The other police officer was there, according to his own testimony, only to protect the evidence. He did not search anything, and made no decisions as to what the warrants permitted to be taken. The decisions as to what was to be taken were made by Rau, Otto, Fabel, and Gill, sometimes individually and sometimes conferring together as to what was to be included under warrant.

These officials seized a massive amount of material, packed it in boxes, and loaded it into a station wagon

which was then filled to capacity. The material was then removed to St. Paul, despite the fact that the search warrants required the material to be turned over to a local police officer. The inventory of material taken appears at the Appendix A, *infra,* pages A-21-28.

Anticipating that the State would present the material seized to the grand jury, Petitioners instituted an action in the Kandiyohi County District Court, pursuant to Minnesota Statutes, Sec. 626.21 (Appendix A, *infra,* page A-135) for the suppression of the material on the grounds that the search and seizure violated the constitutional rights of Petitioners. The Court issued a Temporary Restraining Order and set the matter for hearing on Petitioners' Motion for Temporary Injunction, which was heard on September 23, 1975. The Court suppressed material seized under Paragraph 13 of the search warrants, but denied the Motion for Temporary Injunction and vacated the Temporary Restraining Order. Appendix A, *infra,* page A-29.

The seized material was presented to the grand jury, which on September 30, 1975, indicted all Petitioners on one count of presenting false claims to a public body, under Minnesota Statutes, Sections 609.465 and 609.05, and two counts of theft under Minnesota Statutes, Section 609.52, Subd. 2 (3). (Appendix A, *infra,* page A-34). The indictment was amended at trial to drop one charge of theft against each of the Petitioners.

An Omnibus Hearing, pursuant to Rule 11 of Minnesota Rule of Criminal Procedure, was held before Judge C. A. Rollоff of the Kandiyohi County District Court on November 12 and 13, 1975, at which time Petitioners presented motions to suppress the evidence seized. (Appendix A, *infra,* page A-42). The Court denied the motions (Appendix A, *infra,* page A-82), and quantities of the seized material were introduced into evidence over the objection of Petitioners.

Petitioners were convicted, given probationary sentences, and fined. (Appendix A, *infra,* pages A-89-99).

Petitioners moved for judgments of acquittal or for new trial, presenting arguments that their constitutional rights were denied them by the use of the seized material. The Court denied all motions. On appeal, the Minnesota Supreme Court affirmed. Petitions for rehearing were presented to the Minnesota Supreme Court and were denied.

VI.

REASONS FOR GRANTING CERTIORARI

A. The Minnesota Supreme Court's decision which upholds broad and general search warrants, even though they could have been drafted with particularity, is contrary to decisions of this Court.

We respectfully submit that the search warrants constituted, both in their intent and in their effect, general warrants, in which all records and papers of the corporation and of the Ruuds become exposed to the intrusion resulting from these unconstitutional documents.

For example, Item 10 of the listed items in each warrant (Appendix A, *infra,* pages A-9 and A-19) provides that "*All* records, agreements, or *other* writings which identify the person(s) who have conspired together to obtain funds from *a* public body through fraud, deception, misrepresentation, or theft . . ." could be seized. (Emphasis supplied) This blanket authority to rummage around

in corporate and personal records is, we respectfully submit, a violation *per se* of both the spirit and the letter of the Fourth Amendment. These warrants authorized a *general* search for evidence of *any* crime involving *any* number of persons at *any* time after August 1, 1971. Such a general search is the very evil which the Fourth Amendment was designed to prevent.

Sections 8 and 9 of the warrants (Appendix A, *infra,* pages A-9 and A-19), which emphasize *all* records, *other* documents and *undertermined* persons transacting business with the nursing home and the Ruuds, and which refer to an undefined wrongfulness, contain the same pernicious all-embracing sweep.

Items 11 and 12 (Appendix A, *infra,* pages A-9 and A-19), do not attempt to set any limits as to either time or circumstance and are all-encompassing grants or authority to pry into all transactions of the nursing home and of Norma and Royce Ruud.

Item 13 was so egregious that Judge Thomas Stahler, in the action to suppress, ruled it beyond the pale of the law, and expressed serious misgivings about the rest of the warrant, but left that for determination later in the light of *United States v. Calandra,* 414 U.S. 338, 38 L.Ed. 2d 561, 94 S.Ct. 613 (1973), which he read to prohibit a court from interfering with the grand jury consideration of evidence which might not even be admissible in the later trial. (Appendix A, *infra,* page A-31).

The generality and overly broad scope of the warrants are further demonstrated in the listing of places to be searched:

> 1) The offices and record storage places of Willmar Nursing Home, Inc., at the corporate offices;

> 2) The offices and record storage places of Willmar Nursing Home, Inc., at the home of Royce Ruud and Norma Ruud;
>
> 3) The offices and record storage places of all other businesses owned and controlled by Norma and Royce Ruud at the corporate offices of Willmar Nursing Home, Inc.; and
>
> 4) The offices and record storage places of all other businesses owned and controlled by Norma and Royce Ruud in their own home.

The intent to secure a general warrant is manifest in the testimony of Rau. In preparing the warrants, Rau actually outlined the specific items he sought; despite this specific knowledge of desired materials, Rau then requested a warrant that went far beyond the proper and specific objects of his concern. (Appendix A, *infra,* pages A-46-55).

The behavior of the search party demonstrates that the warrants were treated as general warrants. The peace officers in the group exercised no real control of the searches (Appendix, *infra,* pages A-71, 75, 79). If a file contained just one paper thought to be incriminating, the entire file was taken (Appendix, *infra,* page A-59). Files obviously unrelated to the nursing home and its affairs, eg., "Farm Soc. Sec. on Farm Labor", "Farm Income-1973", "Farm Expense-1973", "Farm Expense-1974", "Farm Expense-1972", "Farm Income-1972", "Randy-Misc. Papers", "Betty-Letters", "Goats", "Linda-Miscellaneous", "Silva Mind Control", and "Miracle Maid Cookware", were taken from the Ruud Home. Appendix A, *infra,* pages A-25-27).

The Minnesota Supreme Court asserted that the drafting of a particularized warrant presented an insurmountable obstacle in light of the large amount of material

available from the field audit. The Court has suggested that the time and expertise necessary would constitute an unreasonable burden. (Appendix A, *infra*, page A-111). But the Court's conclusion was wrong given the fact that Rau had a very clear picture of what documents he had in mind (Appendix A, *infra*, pages A-46-55). The field auditor's worksheets and memoranda disclosed a readily available source of specificity. Time was ample, from January 9, 1975, when the field audit was completed, to August 28, 1975, when the representatives of DPW and the Attorney General's office appeared at the office of the local prosecutor to secure the warrants. Where the Minnesota Attorney General's office with at least two lawyers assigned to DPW was involved all the expertise necessary to prepare proper warrants was available.

We have, therefore, before us, warrants that permitted general searches of "offices and record storage places of Willmar Nursing Home and all other businesses owned and controlled by Norma and Royce Ruud" at both the corporate offices and at their own home. These warrants permitted a general search for all records and documents indicating knowledge of purchase transactions, of receipt of goods, services or funds as a result of *unspecified* wrongful acts, of *undefined* conspiracy against an *undefined* public body through *undefined* criminal acts. These warrants permitted a general search for *all* records and documents pertaining to *all* properties owned by Petitioners Norma Ruud and Royce Ruud personally or by any corporation or partnership controlled by them. Under such general warrants, no record and no document of Petitioners would escape the grasp of the State. These warrants, therefore, run afoul of the constitutional prohibition against general warrants.

We respectfully submit that the disposition of this case on this issue by the Minnesota Supreme Court is not in accord with the principles enunciated by this Court in *Andresen v. Maryland*, 427 U.S. 463, 49 L.Ed. 2d 627, 96 S.Ct. 2737 (1976); *Stanford v. Texas*, 379 U.S. 476, 13 L.Ed. 2d 431, 85 S.Ct. 506, reh. den. 380 U.S. 926, 13 L.Ed 2d 813, 85 S.Ct. 879 (1965); see *Hale v. Henkel*, 201 U.S. 43, 50 L.Ed. 652, 26 S.Ct. 370 (1906).

B. The Minnesota Supreme Court decided in a way contrary to decisions of this Court when it upheld a search which, without authorization, intruded into the private home of Petitioners', a search which was conducted by unauthorized persons, and a search which admittedly resulted in the seizure of irrelevant documents.

It is elemental law with respect to searches and seizures that a search warrant is to be the guide for the officer conducting the search, and it is to be so clear that no discretion is permitted the officer in executing the warrant. *Marron v. United States*, 275 U.S. 192, 72 L.Ed. 231, 48 S.Ct. 74 (1927). In this case, this salutory principle of law was violated time and again.

In the first place, the peace officers themselves appeared to be only nominally involved in the search. One of them felt he was there in some kind of supervisory capacity and the other felt he was there to protect the evidence. (Appendix, *infra*, pages A-68, 79). Neither of them appeared to make the determination from the warrants as to what could legitimately be taken. That task was left to the investigative arm of the State, the DPW people and the assistants attorney general, who were a long way from being responsible for the proper execution of a search warrant.

The rights of the Ruuds in their own home were violated by a thorough search of the whole house, which clearly went beyond the scope of the warrant. Material was taken from a bedroom (Appendix A, *infra*, page A-80). Royce Ruud was given the hollow option of accompanying the searcher, or of permitting him to rummage around the house alone. (Appendix A, *infra*, page A-79).

Gill, a special assistant attorney general who assisted in drafting the warrant, was nevertheless confused as to the nature of documents she was looking for (Appendix A, *infra*, pages A-72-77). The DPW people huddled to make determinations as to what they could take (Appendix A, *infra*, pages A-64, 74) and resolved questions in favor of the State. The whole pattern suggests that Royce Ruud was correct when he concluded after reading the warrant, that "they could take about anything they wanted to". (Appendix A, *infra*, page A-82).

C. The Minnesota Supreme Court decided contrary to decisions of this Court when it upheld the affidavits in support of the search warrants even though the affiant stated many conclusions rather than facts, and even though the affiant's informants were not demonstrably reliable.

For about half of the thirty minute proceedings before the magistrate, statements were made by persons who were not under oath. Testimony under oath was not recorded and was not transcribed. There is therefore no showing that any testimony outside the affidavits can be relied on. One can only speculate as to whether the judicial officer made his determination on sworn testimony, or came to his conclusion in the "dialogue" with Rau before Rau was sworn. (Appendix A, *infra*, page 56).

Under *Aguilar v. Texas*, 378 U.S. 108, 12 L.Ed. 2d 723, 84 S.Ct. 1509 (1964), an affidavit may support a search warrant only if two requirements are met. First, the affidavit must contain sufficient underlying facts so a magistrate may draw his own conclusions as to whether probable cause exists to believe that a crime has been committed. Second, the affiant's source of information and facts must be reliable. The magistrate must be able to make a determination from facts, not from conclusions, that a crime has been committed and that there is probable cause to believe that a defendant committed the crime. The facts necessary to prove the crimes alleged in this case were (1) the payment by the corporation for goods and services that were not related to patient care; (2) the inclusion of these payments in the DPW Rule 49 cost report; (3) the inclusion of such payments in the cost reports with the intention to deceive and defraud the State.

While facts were shown that fulfilled the first of these requirements, those facts, in and of themselves, were not enough. It is not a crime *per se* for a corporation to pay for goods and services for its owners, as closely-held corporations generally do, making adjustments at a later date. There are no facts set forth in the affidavits to meet the second requirement: that the items mentioned were included in the cost report. Rau's statement merely concluded that such was the case. The factual comprehensive recital demanded by *Aguilar* was not given the magistrate. Nor was the third requirement met. There is nothing in the nature of a comprehensive factual presentation that would permit the magistrate, and not Rau, to draw the proper conclusion. Rau, in his later testimony at the Omnibus Hearing, did suggest that he was concerned about

the possible existence of corporate adjustment accounts which would cancel out personal expenditures. His affidavit, however, fails completely to show any facts that demonstrated the lack of such accounts or that it had in fact been thoroughly searched for.

The affidavits fail also with respect to the second requirement of *Aguilar*, that the affiant must set forth circumstances which demonstrate that the informant and the informant's information are reliable. The affidavits on their face disclose that some of the information came from employees who wished, for some reason not set forth, to remain anonymous. Although the possibly invidious motive of such employees to lie or exaggerate was noted by the Minnesota Supreme Court (Appendix A, *infra*, page A-108), the Court brushed this problem off with the statement that the affidavits stated probable cause without the additional information supplied by the unnamed informants. (*Ibid.*). The Minnesota Court's conclusion is entirely without foundation, since there appears nowhere in the affidavits or elsewhere anything to delineate which information relied on came from Rau, from Otto, from unnamed informants, or from what may have been disgruntled former employees. This is a significant deviation from the standards this Court has set forth in *Aguilar*. Because the seized evidence was admitted when it should have been suppressed, Petitioners were convicted.

CONCLUSION

For the reasons set forth above, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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